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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	No. 08 CR 888
Government,)	
)	Chicago, Illinois
vs.)	
)	July 15, 2010
ROD BLAGOJEVICH,)	
ROBERT BLAGOJEVICH,)	
)	10:28 o'clock a.m.
Defendants.)	

VOLUME 25
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL
AND A JURY

For the Government:

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17 (The following proceedings were had out of the
18 presence of the jury in open court:)

19 THE CLERK: 2008 CR 888, United States versus
20 Blagojevich.

21 MR. SCHAR: Good morning, Your Honor.

22 Reid Schar, Chris Niewoehner and Carrie
23 Hamilton on behalf of the United States, joined
24 today by Marc Krickbaum, Bill Ridgway, Laurie
25 Barsella, Stephanie Zimdahl.

:28AM

:29AM

1 MR. ETTINGER: Good morning, Your Honor.
2 Michael Ettinger for Robert Blagojevich.

3 MR. GOLDSTEIN: Good morning.

4 Aaron Goldstein and Sheldon Sorosky on behalf
5 of Rod Blagojevich, also present is Lauren
6 Kaeseberg.

7 THE COURT: We begin with tab 93, I think.

8 MR. GOLDSTEIN: Correct, Your Honor.

9 THE COURT: The government's position?

10 MR. SCHAR: Judge, assuming it's going to be
11 offered for some type of state-of-mind argument, I
12 can see if the defendant testifies, but the first
13 section deals with budget issues, but this turns
14 into another meandering discussion related to a
15 rehash of additional conversations that occurred
16 with additional people not part of this.

17 I'm not sure that that would be relevant even
18 if the defendant testifies, to the extent it would
19 be both cumulative and confusing, and certainly it
20 wouldn't fall directly under 803(3), not without
21 some delineation of exactly what the 803(3)
22 statements are at this point.

23 MR. GOLDSTEIN: Your Honor, it is state of
24 mind. This shows a conversation between
25 Mr. Blagojevich and Mr. Greenlee. They are

1 discussing this deal again, they are discussing what
2 needs to take place for this deal to occur. This is
3 clearly what is on his mind, Mr. Blagojevich's mind,
4 as he's speaking to Mr. Greenlee discussing this
5 deal.

6 There are, to a lesser extent, there are
7 contradictions between what Mr. Greenlee testified
8 to and to what he's discussing in this conversation,
9 as well, Your Honor.

10 THE COURT: well, whatever impeachment there
11 is in Greenlee, as to Greenlee, based on classical
12 impeachment as opposed to contradiction, whatever
13 could have been done or whatever they wanted done,
14 defendants wanted done, is done; he's off the stand.

15 To the extent that you think some things
16 contradict the description given by Greenlee, maybe
17 that's okay, but my main concern is here that we're
18 not so much dealing with state of mind but a
19 situation in which the defendant, Rod Blagojevich,
20 gets on the witness stand and gives his version of
21 what he was doing, what was in his mind.

22 And he could testify, and I assume he would
23 testify, and I assume this with respect to other of
24 these transcripts, that he is going to talk about
25 healthcare, capital budget, lots of things that he

1 thought were good and that this is what he wanted to
2 get done.

3 And he testifies that this is clearly what he
4 told Greenlee, and that they discussed how this
5 could be done without raising taxes. Although,
6 Greenlee's answer here seems to me to be "well, we
7 don't actually have to raise taxes, we'll just raise
8 fees," and usually people who are in elected office
9 when they say they don't raise taxes, don't like to
10 be asked questions about raising fees because
11 they're still paid by the public. But if what he
12 wants to say is is that he said these things to
13 Greenlee, that he had a program, I don't see that
14 the government is disputing anything, because
15 they're not disputing any of that, this conversation
16 with respect to the earlier part of it where he is
17 talking about the program is extraneous.

18 If they do dispute it, that's another issue.
19 And I'm not going to confine the defense to a
20 situation where it doesn't come in unless the
21 government stands up and explicitly says he didn't
22 do it. There might be stuff in the tenor of the
23 cross-examination that makes it clear that it's the
24 government's position, and, if that occurs, some of
25 this stuff does serve to corroborate his version and

1 would be played.

2 So this has to wait to see what his testimony
3 is. And I'm not talking about the stuff about
4 closing tax loopholes and commercial fee increases,
5 and a variety of other stuff.

6 And that also includes the stuff discussing
7 health and health insurance policy. And I have some
8 additional reluctance with respect to that because
9 of the vagueness of that discussion, but he can
10 testify to all of this stuff and we'll see the
11 extent to which the government disagrees,
12 particularly in light of the fact that, for all
13 practical purposes, a good deal of this came in in
14 Greenlee's testimony, anyway.

15 Now, the rest of this having to do with who
16 sits on the senate seat is a series of things that
17 his recounting, that Defendant Blagojevich is
18 recounting what he said to people, and that has less
19 to do with his state of mind than the way he is, and
20 I'm using his word, he's playing this because he
21 talks about plays, and he can continue to talk about
22 his plays, but none of this shows a state of mind
23 which in any way contradicts or disputes the
24 evidence that's already been in.

25 He was looking about who he should appoint

1 and was considering a bunch of people in turn, and
2 he asked a lot of people about who he should pick.
3 I don't divine state of mind from this, unless the
4 government gets up here and alleges that he had
5 never really cared what people had to say, which I
6 very much doubt that they're going to contend in
7 this case. I just think it's endlessly repetitive.
8 There's a lot of people mentioned, a lot of
9 candidates, it's just more of the same thing, and
10 deals with issues that I don't think they're going
11 to dispute. If they do, it could open the door to
12 that.

13 Tab 96.

14 Let's pause for a second here.

15 (Brief pause).

16 THE COURT: The government's view?

17 MR. SCHAR: Judge, it's similar, it's kind of
18 a rambling nature. It's another conversation with a
19 polster which goes through a variety of individuals,
20 obviously it picks out certain sections. Again, I
21 think based on what Your Honor just said, it's a
22 rehash of the same thing but with a different
23 individual. So for all the reasons Your Honor has
24 already said, it wouldn't be appropriate.

25 To the extent it is, there has to be a lot

1 more of this call played so that the proper context
2 could be put in place as to a whole variety of
3 different individuals, including the fact that they
4 cherry picked with one individual when, in fact,
5 divided the call suggests to Defendant Blagojevich
6 that he would go with a completely different
7 individual he was thinking of that day. Unless
8 there is some delineation exactly what was his state
9 of mind, I don't see it at this point. Obviously,
10 on cross-examination.

11 THE COURT: The problem I have with this one,
12 particular with this one is, there seems to be a
13 complete absence of substance, and there are a
14 couple on there later on this that you don't even
15 know what people are referring to. They're talking
16 about something in exchange, but nobody says what
17 it's in exchange for. Granted, that there may be a
18 subtext here that we don't know about. Maybe
19 Defendant Blagojevich and Yang had so many
20 conversations over the years that they understand
21 what the reference is when one asks something, but
22 there is nothing here that the jury can really
23 comprehend.

24 what you're entitled to do, and basically
25 it's the same rule, the defendant will testify and

1 we'll see if the government disputes stuff, but the
2 truth is with this one, I don't think there's a lot
3 here for the government to dispute, because there's
4 really nothing there. It's just a lot of talk that
5 is, even by the standards of this case, notably
6 inconclusive. There is really no clue here as to
7 what his state of mind is.

8 what he can do is testify what his state of
9 mind is, but this does nothing to corroborate or
10 contradict it. It's just the same thing that he's
11 gone through again and again, except this one has
12 even fewer details. I just don't see that this is
13 any help at all to anybody.

14 MR. GOLDSTEIN: I mean, first, "cherry
15 picking" I find a bit ironic, the word "cherry
16 picking," but nonetheless we are trying to put in
17 certain elements that are relevant to our case.
18 What you have is a state of mind, first, as to Rod
19 Blagojevich's view of Jesse Jackson, Jr.;
20 specifically talks about not wanting to pick him,
21 that's a contradiction to what the government has
22 alleged that he wanted to pick Jesse Jackson, Jr. in
23 exchange for campaign contributions; there's a
24 discussion of the emissary and whether Senator
25 Durbin would be an emissary or not, that goes to the

1 state of mind as to what Rod Blagojevich was
2 thinking as to his strategy on how to pull off a
3 deal like this; and then, generally speaking, about
4 this deal, what his state of mind is as to this deal
5 on this date and time.

6 THE COURT: I just don't think it illuminates
7 anything, so I'm sustaining the objection.

8 Tab 98, why do you want this?

9 MR. GOLDSTEIN: Tab 98, the government has
10 given us their positions on each of these tabs, and
11 they did indicate they had no objection, but under
12 the rule of completeness we wanted to add Page 2,
13 line 20, if that's their position today, we're in
14 agreement with that.

15 THE COURT: That's the government's position?

16 MR. SCHAR: Judge, we're conferring with
17 that.

18 THE COURT: what? You're conferring?

19 MR. SCHAR: We're conferring.

20 (Brief pause).

21 MR. SCHAR: Judge, no objection, assuming the
22 totality of the call is played.

23 THE COURT: well, it's interesting because,
24 on my little sheet of notes, I said admitted. So we
25 just had a pointless discussion.

1 Tab 99, the government's position?

2 MR. SCHAR: Again, it goes to the same
3 reasons, with a polster.

4 THE COURT: I do have one question because it
5 will illuminate my thinking about this. Turn to
6 Page 19.

7 (Brief pause).

8 THE COURT: You got Page 19?

9 MR. GOLDSTEIN: Yes.

10 THE COURT: It is a mystery to me, which you
11 may be able to solve, why under any circumstances
12 your client would want this played to the jury.

13 MR. GOLDSTEIN: Why not? I mean, Your Honor,
14 he's discussing his state of mind here.

15 THE COURT: And the state of mind he's
16 discussing is he wants to shut down state government
17 and try to blame it on somebody else? I just don't
18 understand why.

19 MR. GOLDSTEIN: It' --

20 THE COURT: Now, if you tell me that he
21 wasn't serious about that, I believe you, but --

22 MR. GOLDSTEIN: Well, I don't necessarily see
23 that that's the interpretation that one can garner
24 from this, it's an explanation of what's going on in
25 the state at that time.

1 I don't see it as necessarily him wanting to
2 -- there's further discussion as to his adviser--in
3 the government's view, polster--is giving him
4 suggestions, and him, Harris, talking about this
5 discussion with Mr. Yang about the particular
6 subject.

7 (Brief pause)

8 THE COURT: You like what's in the note or
9 not? It's up to you.

10 MS. KAESEBERG: We're interpreting.

11 MR. GOLDSTEIN: We need a handwriting class.

12 The point of the matter is, we want it. It
13 explains what he is going through in the state at
14 that time and it's going to be explained.

15 And my notes, also, is that the government
16 had sort of half and half objection.

17 MR. SCHAR: I think that while we don't have
18 an objection to the part of shutting down the
19 government, but we would object to the other
20 portions. We don't think they are any different
21 from the last conversation, it's all out there.

22 MR. GOLDSTEIN: You won't cherry pick that
23 portion.

24 THE COURT: I believe it's duplicative, it
25 adds nothing new. But, again, I reserve what

1 happens during the course of his testimony, either
2 direct or cross, some of it might come in.

3 It's possible, in fact, that the government
4 might want to put some of it in, in which case they
5 will probably have a different edit than you do and
6 I'll consider that as time goes on.

7 Tab 102, the government's position?

8 MR. SCHAR: Judge, this is the government's
9 read of it: It's totally irrelevant, hearsay, 403.
10 They want the entirety of the call which deals with
11 so many different topics that have nothing to do
12 with the charges in this case. It's just not clear
13 to the government at all how this goes to their
14 theory of the case.

15 MR. GOLDSTEIN: Your Honor, it is a long
16 call, I don't think that is any reason to bar the
17 call.

18 THE COURT: No, it's not; it's not. It's
19 just an argument, I guess, based on waste of time,
20 but there is nothing, per se, that's wrong with a
21 long call.

22 MR. GOLDSTEIN: This is a call between Rod
23 Blagojevich and Chris Kelly, a coconspirator that
24 the government claims, they put his picture up on
25 the wall numerous times. This is a conversation

1 that has --

2 THE COURT: But you do realize the only way
3 you can get a coconspirator statement in is to prove
4 that the United States Government was a conspirator.

5 MR. GOLDSTEIN: That the United States
6 Government was a conspirator?

7 THE COURT: Yeah, that's basically the rule
8 but often forgotten by counsel for defense in
9 federal criminal cases.

10 MR. GOLDSTEIN: Fair enough, Your Honor.
11 Nonetheless, what we have, just on the two
12 individuals on the call itself, creates a lot of
13 relevancy.

14 As to the substance of the call, what you
15 have is, there's a lot of discussion, particularly
16 on Page 55 there's a mention of Bernie Kozar who is
17 mentioned in the trial, and this explains why the
18 governor's state of mind as to this horse racing
19 bill and explains his concern as to moving forward
20 at a certain time with the bill.

21 He gets a call from Chris Kelly, completely
22 out of the blue, hadn't spoken to him for sometime,
23 and then Chris Kelly is mentioning this, and you'll
24 see in these other calls some discussion of it, and
25 that explains his concern as to why he was not

1 signing the bill.

2 Now, there are, I must acknowledge, on
3 Page 46, line 13, through Page 48, line 10, there
4 are mentions of subjects that is in Your Honor's
5 order as far as motion in limine. So we understand
6 that, we have no problem omitting that, but besides
7 that, Your Honor, this is a very relevant call and
8 explains the state of mind of Rod Blagojevich of why
9 he moved forward or didn't move forward on the horse
10 racing.

11 THE COURT: But you've offered the entirety,
12 the entire conversation.

13 MR. GOLDSTEIN: I understand that, Your
14 Honor.

15 THE COURT: I reject the offer of the entire
16 conversation. And, again, there's something in here
17 that I don't understand why you would think it would
18 benefit your client, and that's Page 41, lines 28
19 through line 38, but if you want to submit an edited
20 version of this, I will give you leave to do that.

21 MR. GOLDSTEIN: Will do.

22 THE COURT: Tab 121, what's this being
23 offered for?

24 MR. GOLDSTEIN: Your Honor, there's two
25 issues; one is state of mind as to, in particular, a

1 call between Harris and Emanuel. The state of mind
2 of Mr. Emanuel, but even if it's not as to state of
3 mind, it explains the actions that Mr. Emanuel took
4 after this call.

:53AM 5 This is a call in which Harris -- there's a
6 discussion between Harris and Emanuel talking about
7 the senate seat. Mr. Emanuel then contacted
8 Mr. Durbin, Mr. Axelrod, as to the subject, and
9 explains, this call explains why he then went
:53AM 10 forward and made that contact with those individuals
11 about the senate seat in particular.

12 THE COURT: Right. And this is relevant to
13 your case because?

14 MR. GOLDSTEIN: Well, it explains why or how
:53AM 15 the process was to get to Lisa Madigan done.

16 MR. SCHAR: It clearly doesn't go to anyone's
17 state of mind that is relevant to this case.

18 THE COURT: It's hearsay, does not fall under
19 any hearsay exception. And if you think that this
:54AM 20 is significant, there are other ways to prove this.
21 The objection is sustained.

22 127.

23 Incidentally, we will be taking a break to do
24 a telephone conference at 11:00, but it's likely to
:54AM 25 be a very short break.

1 MR. GOLDSTEIN: And I do believe, Your Honor,
2 we have agreement on the next amount of calls coming
3 up.

4 THE COURT: Okay.

5 127, is there an objection to 127?

6 MR. SCHAR: Yes, Judge. It's not relevant to
7 anything. Reporting back from another conversation
8 to the defendant about legal issues that have
9 nothing to do with the specific charges in this
10 case. So it's 403 at a variety of different levels,
11 and there's no hearsay exception that could possibly
12 lead to the admissibility.

13 MR. GOLDSTEIN: Your Honor, this goes to
14 state of mind. The government put in a call
15 discussing the factors at one point that the
16 Governor's decision-making as to the senate seat a
17 legal, personal, political. This call explains the
18 Governor's thinking as to why he came up with those
19 rankings at that time, Your Honor. So this explains
20 state of mind, it explains why he said some of the
21 things he did on prior conversations.

22 THE COURT: That explanation, one, has to
23 come from his mouth; the second thing is, as I read
24 this, what you have is a conversation in which the
25 Governor and Mr. Quinlan are trying to guess what

1 the meaning of still a third lawyer told them about
2 what a witness may or may not have said, when it is
3 quite clear from Quinlan's initial comment that the
4 lawyer didn't actually tell them what his client
5 said. This is just a bunch of guys and people
6 involved speculating on what somebody might have
7 said.

8 If your proposition that you intend to prove
9 is that at one point in time the Defendant Rod
10 Blagojevich was extremely curious about what
11 witnesses were saying about him, I think the
12 government would likely be willing to stipulate to
13 that being his state of mind.

14 There's nothing of substance here, just a
15 bunch of people guessing at what somebody said. And
16 the only state of mind that I see revealed by this
17 is the one I just stated, that they would like to
18 know, as would 99 percent of sane people in his
19 position. You want to know what people are saying
20 about you, you want to know what they're saying
21 about you and they haven't been told, they're trying
22 to guess, like overhearing a session of people
23 trying to read the rooms, which is not very popular
24 now and hasn't been since the middle ages, but it
25 was justified as informative. So I'm sustaining the

1 objection.

2 142.

3 MR. SCHAR: 142 and 143 the government is not
4 going to object if the defendant testifies.

:58AM

5 THE COURT: That's what I wrote. I wrote,
6 "if testify" on it.

7 Do you have a problem with that one?

8 MR. GOLDSTEIN: No.

9 THE COURT: Okay.

:58AM

10 MR. GOLDSTEIN: Your Honor, as to 146, the
11 next one, the government indicated to us that
12 certain sections appear to be admissible as to state
13 of mind and then gave other lines that should be
14 added, I believe, for completeness. If that is the
15 case, we have no objection to the suggested lines
16 being admitted.

:58AM

17 THE COURT: You'll be hearing from the
18 government shortly. They're conferring.

19 (Brief pause).

:59AM

20 MR. GOLDSTEIN: They have specific portions
21 of the call they wanted admitted, narrowing what we
22 wanted, just so it's clear.

23 (Brief pause).

:59AM

24 MR. SCHAR: Judge, I think there were three
25 specific sections we didn't have objections to. You

1 have those pages and line numbers?

2 THE COURT: Yeah.

3 MR. SCHAR: This is Page 8, line 18.

4 THE COURT: Hold it.

5 (Brief pause).

6 THE COURT: To?

7 MR. SCHAR: To Page 9, line 4.

8 THE COURT: Okay.

9 MR. SCHAR: Picking it up again on Page 14,

10 line 1.

11 THE COURT: 14, line what?

12 MR. SCHAR: Yes, sir.

13 THE COURT: What line?

14 MR. SCHAR: Through line 30 of that page.

15 THE COURT: The entire Page?

16 MR. SCHAR: The entire --

17 No, line 30, Judge. Sorry. Not the entire
18 page.

19 THE COURT: I think maybe you mean line 29.

20 MR. SCHAR: I probably do.

21 (Brief pause).

22 MR. SCHAR: I'm sorry, beginning on line 1
23 and ending line 30.

24 THE COURT: Okay.

25 (Brief pause).

1 THE COURT: Okay, what's the next passage?

2 MR. SCHAR: Page 19.

3 THE COURT: Okay.

4 MR. SCHAR: Line 2 through line 17.

:01AM

5 THE COURT: Okay.

6 Now your position.

7 MR. GOLDSTEIN: We agree with that.

8 THE COURT: You agree to what would be read
9 and no more?

:01AM

10 MR. GOLDSTEIN: Correct.

11 I thought there was one more exception.

12 THE COURT: There was one more.

13 MR. SCHAR: Page 21, line 38.

14 THE COURT: Say it again.

:01AM

15 MR. SCHAR: Page 21, Judge, line 38.

16 THE COURT: Ending at?

17 MR. SCHAR: Page 22, line 8.

18 THE COURT: Are you satisfied with that?

19 MR. GOLDSTEIN: Yes.

:02AM

20 THE COURT: Okay. That will be played.

21 MR. GOLDSTEIN: Thank you.

22 THE COURT: I'm going to stop now.

23 The next one is tab 158.

24 15, 20 minutes, tops.

:02AM

25 (Recess.)

1 THE MARSHAL: Ladies and gentlemen, please
2 remain seated.

3 THE COURT: The government's position with
4 respect to 158?

:25AM

5 MR. SCHAR: No objection, Judge.

6 THE COURT: I have one more that's not
7 tabbed.

8 MR. GOLDSTEIN: Correct; Section 117.
9 Does your Honor have a copy?

:25AM

10 THE COURT: I got a couple of --
11 (Brief pause).

12 THE COURT: Yeah, I have it. It's in here.
13 The tab has no number.

14 MR. GOLDSTEIN: Yes.

:26AM

15 (Brief pause).

16 THE COURT: The government's position?

17 MR. SCHAR: Judge, we're objecting as
18 irrelevant, hearsay. I don't see anything in here
19 that goes to state of mind.

:26AM

20 THE COURT: This is the one that I was
21 referring to when I said you don't know what the
22 reference are.

:26AM

23 And this actually sounds like the
24 conversation somebody would have if they thought
25 that they were being recorded. To give you an

1 example:

2 "I called you as soon as I got the e-mail."

3 "What? You talking about now? I just went to
4 the restroom."

:27AM

5 "I am talking about the other one."

6 Then... "I got to put this on hold."

7 And then your client:

8 "It's for, like, yeah, he is making it sound
9 like it is urgent or something, you know

:27AM

10 anything about this?"

11 "No, but I suspect it's what I mentioned to you
12 on the plane. I don't know anything about it,
13 but I suspect it's that."

14 "What's that?"

:27AM

15 "Remember I mentioned to you about, you know,
16 what he thinks, a bill may help him with his."

17 "I know, that's what I think, too. I don't
18 want, I don't want -- that's what I, I mean
19 candidly, that's what I think it is, I don't
20 know."

:27AM

21 "That's what I think it is, too. And, you know
22 what? That offends me, that offends me.

23 "I don't know, I don't know if that's it, I
24 haven't spoken to him at all, I'm just

:28AM

25 guessing."

1 what does this tell us?

2 MR. GOLDSTEIN: This is a conversation about
3 Chris Kelly.

4 THE COURT: Okay.

5 MR. GOLDSTEIN: And it explains the state of
6 mind of Governor Blagojevich when Chris Kelly called
7 in his concerns because of the previous tab that we
8 discussed, his concerns that Chris Kelly was trying
9 to have some type of advocacy as this bill because
10 he thought it somehow helped him.

11 So Governor Blagojevich is reporting to his
12 lawyer his state of mind as to his concerns
13 referencing a plane ride which was discussed in the
14 Government's case-in-chief at least at the aftermath
15 of that, the conversation between Harris and
16 Quinlan.

17 THE COURT: It's too opaque for me.

18 MR. GOLDSTEIN: But he can certainly explain
19 -- I mean, the call can be played, he can explain
20 what he meant by all these things and what his
21 understanding of Mr. Quinlan.

22 THE COURT: He can testify to this stuff, but
23 this doesn't aid him in any way. It doesn't aid the
24 prosecution either. It's the problem with talking
25 about stuff and you maybe think you are being

1 overheard, you don't say anything.

2 And what the jury can derive from this about
3 his state of mind is absolutely nothing more than
4 what he testifies to. When I started to read this,
5 I thought there's something there because this does
6 have the kind of urgency that often justifies the
7 admission of something that's 803(3), some reaction
8 to something, but it's just not clear from this what
9 it is, and it's not clear what he wants to do. It's
10 just too opaque.

11 Now we're on to 167.

12 The government's position?

13 MR. SCHAR: The same position as to the last
14 call, Judge, for the same reasons; and, in addition,
15 there is all types of sections here in the phone
16 call that are getting into potential sentencing date
17 of a potential coconspirator and it has nothing to
18 do with state of mind, and for all of the same
19 reasons, as well as 403 we object to it.

20 MR. GOLDSTEIN: Your Honor, to make things a
21 little bit easier, we indicated we want the entire
22 call, we would only request Page 1 starting at line
23 42 to the end of Page 6.

24 And, again, this is --

25 THE COURT: Yeah, let me read it again.

1 MR. GOLDSTEIN: Okay.

2 (Brief pause).

3 THE COURT: Page 6 through?

4 MR. GOLDSTEIN: The end of Page 6.

:33AM

5 THE COURT: I'll ask this question just in
6 passing, do you regard the last exchange, Page 6,
7 line 41 to line 46 as particularly important or not?

8 MR. GOLDSTEIN: Yes.

:34AM

9 THE COURT: Now, suppose this comes in,
10 assuming it's in, assuming there's a closing
11 argument in this case, what is the argument going to
12 be about why this helps the defendant?

:34AM

13 MR. GOLDSTEIN: The reason why this call is
14 relevant is it explains Mr. Blagojevich's state of
15 mind as to this bill, this horse racing bill. He
16 specifically says he's inclined for the bill, but
17 he's talking to his lawyer, he's concerned about the
18 fact that Chris Kelly has now, in essence,
19 contaminated the process, and that explains his
20 concern as to why he moved forward or didn't move
21 forward to this bill.

:34AM

22 The government has presented the theory that
23 the reason why he's holding it up is to get campaign
24 contributions, this completely contradicts that
25 theory and explains why this bill --

:34AM

1 THE COURT: Well, wait, wait, wait. Why
2 don't you drop the "completely" because you can't
3 really sustain that one.

4 MR. GOLDSTEIN: That's for the jury to
5 decide.

6 THE COURT: Well, what you've got is is you
7 got evidence that whatever had to do with money for
8 racetracks, there was at least one other reason, and
9 that's what, I think, you want to prove here, that
10 there was one other reason, and the jury can make up
11 its mind as to which reason might be controlling.

12 Even he does not appear, your client does not
13 appear to rely completely on this conversation, but
14 I can understand why it might conceivably support
15 some testimony to that evidence. But that's
16 basically what your argument is going to be.

17 MR. GOLDSTEIN: Yes.

18 THE COURT: Now the government can respond.

19 MR. SCHAR: Judge, we'll withdraw the
20 objection.

21 THE COURT: Okay.

22 MR. SCHAR: I'm sorry, Judge --

23 THE COURT: Only to the part they're
24 offering, which is Page 1, line 42, through Page 6,
25 line 47.

1 MR. GOLDSTEIN: That's fine, Your Honor.

2 MR. SCHAR: Just one moment, Judge?

3 THE COURT: Sure.

4 (Brief pause).

5 MR. SCHAR: That's right, Judge.

6 THE COURT: All right.

7 172, Page 3, line 14 to the end of the call.

8 Now, when was the date of the story that
9 precipitated this conversation?

10 MR. SCHAR: The story came out the following
11 day. I believe, as the government indicates, they
12 were alerted to that.

13 THE COURT: So the newspaper article appears
14 the rough equivalent of some guy walking on the
15 street with a sign saying "the end is near" and this
16 is the discussion of it.

17 The government's objection?

18 MR. SCHAR: Judge, we object, obviously.
19 It's not 803(3), it's historical looking, it's
20 confusing because Mr. Quinlan is on the line this
21 time and opines after the motive is fabricated,
22 which he knows that there were potentially
23 recordings against him, for all those reasons we
24 would object.

25 MR. GOLDSTEIN: Your Honor, this is actually,

1 I think, an excited utterance argument and I'll let
2 Mr. Riebman explain to Your Honor.

3 MR. RIEBMAN: Your Honor, Elliott Riebman on
4 behalf of Rod Blagojevich.

5 This conversation was not the conversation
6 the government just pointed to, that was a
7 conversation on the following morning.

8 This conversation occurred barely ten minutes
9 after Rod Blagojevich learned that he might be being
10 recorded and that John Wyma was potentially
11 cooperating with the federal government.

12 So this small lapse in time, from 10:29 p.m.,
13 which is government tab 97, to 10:42 p.m., is not
14 sufficient to destroy the distress of the excitement
15 that Rod Blagojevich is under in this conversation.
16 He has no time to fabricate and --

17 THE COURT: Okay, but which one is the
18 excited utterance?

19 Because I'll give you an example:

20 "Blagojevich" I talked to Doug like an hour and
21 a half ago, he didn't tell me any of this."

22 this I do not think is an excited utterance.
23 I mean, he may be excited about it, but the content
24 is not an excited utterance. So something here you
25 want to identify as the excited utterance or

1 utterances?

2 MR. RIEBMAN: Yes, Your Honor, Page 4, line
3 6.

4 THE COURT: Right. I'm there.

5 MR. RIEBMAN: This is the first moment that
6 Rod Blagojevich reacts to recollecting anything that
7 he might have said, and he's telling his lawyer,
8 without any time to fabricate, what he might have
9 said that could have been recorded.

10 Additionally, the tone of the defendant Rod
11 Blagojevich's voice is clearly in distress --

12 THE COURT: So talking about line 6 through
13 line 15?

14 MR. RIEBMAN: Yes.

15 THE COURT: Okay. Is there anything else?

16 MR. RIEBMAN: Additionally to line 38, the
17 statement --

18 THE COURT: Yeah. I see it.

19 (Brief pause).

20 THE COURT: So you're offering as excited
21 utterance--assuming the premise is laid, which
22 actually has to sort of be laid in his testimony--he
23 just learned about this and he said so-and-so, and
24 then he winds up talking to people about this, in
25 the course of talking to people about this he says:

1 "... was in my office, wanting to seem weird,
2 you know, and I told them that we'd gotten
3 Dusty Baker called me, you know, I was pressing
4 him on a fundraiser for Vondra, you know, I
5 said Vondra wants something, I may have said
6 that, I don't know..."

7 then Quinlan responds, and my assumption is
8 you're not going to attempt to say that this is
9 an opinion of counsel?

10 MR. GOLDSTEIN: No.

11 MR. RIEBMAN: No.

12 THE COURT: No.

13 Then his next thing is:

14 "Okay, and then I'm thinking Magoon, call Magoon
15 to see if he can do a fundraiser because, I'm,
16 you know, one was not for the other, but Dusty
17 Baker called me and said that they're behind
18 payments on Children with pediatric factors so
19 that Greenlee could find the money and I called
20 Magoon and told him Dusty Baker called, okay,
21 and after the fact I told Wyma, look, we just
22 did something for Children's Memorial Hospital,
23 see if you can, they can do something for me,
24 that's not a problem, here's the bill, stop
25 there."

1 That's what you're offering?

2 MR. RIEBMAN: We're offering to stop at line
3 39, Quinlan's response.

4 THE COURT: Okay. And are you going to argue
5 that that's an opinion?

6 MR. GOLDSTEIN: Opinion of counsel?

7 THE COURT: Yes.

8 MR. GOLDSTEIN: As to the advice of counsel
9 on intent, no.

10 THE COURT: Right. Because it's a little
11 late in the game.

12 MR. GOLDSTEIN: Yeah, it's after the fact.
13 We're not saying that.

14 THE COURT: Okay.

15 So leaving out line 39 through 40, which is
16 Quinlan's response, this is what's on offer. Does
17 somebody actually have this?

18 MR. SCHAR: The recording?

19 THE COURT: Yeah.

20 MR. RIEBMAN: Yes, Your Honor.

21 THE COURT: What?

22 MR. SCHAR: I said we have the recording, we
23 don't have it upstairs.

24 MR. GOLDSTEIN: We have it.

25 THE COURT: You have it here? Can you play

1 it?

2 MR. GOLDSTEIN: would you like it in
3 chambers?

4 THE COURT: I've already read it out loud.

: 4 3 AM

5 MR. GOLDSTEIN: Okay.

6 MR. SCHAR: I believe it's faster if you
7 listen to the phone call -- if you listen to the
8 whole phone call.

: 4 4 AM

9 THE COURT: Yeah, I do want to listen to all
10 of it.

11 MR. GOLDSTEIN: Just waiting for the
12 speakers.

13 THE COURT: Sure.

14 (Brief pause).

: 4 6 AM

15 MR. GOLDSTEIN: where would you like it to
16 start?

17 THE COURT: The call you're offering -- well,
18 actually --

: 4 6 AM

19 MR. GOLDSTEIN: You want it to start on Page
20 3?

21 THE COURT: Yeah, start on Page 3.

22 MR. GOLDSTEIN: Okay.

23 (Tape played.)

24 THE COURT: Mr. Schar --

: 4 9 AM

25 MR. SCHAR: We still have an objection,

1 Judge.

2 THE COURT: well, actually, that wasn't the
3 question I was going to ask.

4 I would say that he's excited, and I would
5 say that this is an excited utterance, the question
6 is, once being an excited utterance, does this
7 necessarily mean it comes in, because the defense
8 will argue that this excited utterance was perfectly
9 truthful.

10 And, of course, I don't think I'm going to
11 allow them to play it unless this is actually the
12 testimony of the defendant, he has to testify to it.

13 The problem with this particular excited
14 utterance is to determine what he's excited about.
15 Is he excited about the fact that there's this
16 charge and there's this completely innocent
17 explanation or is he excited because he's trying to
18 figure out some way to explain what he's already
19 done. And, frankly, I think this is fair to give
20 this to the jury and let them consider this. So
21 what was played to me can be played to the jury.

22 But the issue is whether we care much about
23 the preface. And I think the preface, which means
24 Page 3, line 14, if the rest of it is played, it's
25 something that I believe both sides would want in

1 because otherwise you don't have context.

2 MR. SCHAR: The only line that we'd ask to
3 take out is the question at the end.

4 THE COURT: You mean "that's not the problem
5 is it?" Yeah, I'll strike that. It's also
6 something that cuts both ways, but it's unanswered.

7 Okay, so that's 172, our next is 189.

8 Since I anticipate that there will be an
9 objection to this, you can tell me what your theory
10 is.

11 MR. GOLDSTEIN: Your Honor, this is a call
12 between Harris and Emanuel, they're discussing the
13 senate seat, and they are discussing possible
14 individuals and the name Jesse Jackson comes up, and
15 it's our contention, Your Honor, that this explains
16 why Rahm Emanuel did what he did in going forward to
17 eventually make himself the emissary for this deal,
18 Your Honor.

19 MR. SCHAR: Judge, we would object to this.
20 This is not for the mind of the defendant; it's not
21 relevant. The defendant understands and knows he's
22 going to get on the stand and testify as to what he
23 believes was occurring, what the basis was, and it's
24 not going to be this phone call.

25 THE COURT: The objection is sustained.

1 196.

2 MR. GOLDSTEIN: Your Honor, as to 196, I do
3 believe we have agreement. I think the government
4 wants the entire call come in under completeness.

5 MR. SCHAR: Yes.

6 MR. GOLDSTEIN: We have no objection to that.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: Same with 199, I believe.

9 MR. SCHAR: We don't object to 199.

10 THE COURT: Tab 209, it's short.

11 MR. GOLDSTEIN: It is a short one. I believe
12 we have an agreement on that, as well.

13 MR. SCHAR: There's two parts. The first
14 part we would object to, I think the second part
15 that begins at --

16 THE COURT: Except what I have listed as
17 offered here is this Page 8, line 41, that's what's
18 on the sheet.

19 MR. GOLDSTEIN: It's actually Page 4,
20 starting at the top, line 1.

21 THE COURT: Okay, so the sheet is in error.
22 That's fine.

23 MR. GOLDSTEIN: Correct.

24 MR. SCHAR: What the sheet has we wouldn't
25 object to, everything else we would.

1 THE COURT: Okay. So we got Page 8, line 41.
2 So I'm talking now about what's not objected to.

3 MR. GOLDSTEIN: Okay.

4 THE COURT: Page 8, line 41 can't quite be
5 right because it begins with Greenlee saying "that's
6 good."

7 MR. GOLDSTEIN: I believe that it's Page 7
8 that we're requesting. Page 7, line 44.

9 THE COURT: Line 44?

10 MR. GOLDSTEIN: Yes.

11 THE COURT: And that ends with Page 9, line
12 18?

13 MR. GOLDSTEIN: Correct.

14 THE COURT: The government's position?

15 MR. SCHAR: I just have to check real quick.

16 THE COURT: Yes.

17 (Brief pause).

18 MR. SCHAR: Judge, we wouldn't object if it's
19 Page 8, line 36.

20 THE COURT: Say that to me again.

21 MR. SCHAR: Page 8, line 36, through the
22 following section, I think everything that is on the
23 bottom of Page 7 through Page 8 to 36, we wouldn't
24 object.

25 THE COURT: So you're not objecting to that

1 which begins with Page 8, line 36?

2 MR. SCHAR: Correct.

3 THE COURT: Through Page 9 through the first
4 word of line 20?

5 MR. SCHAR: Yes.

6 THE COURT: Okay, so that we're agreed on.

7 MR. GOLDSTEIN: We're agreed with that.

8 THE COURT: Okay, now let's deal with the
9 rest of it, now that I understand what's agreed to.

10 MR. GOLDSTEIN: As far as the earlier stuff,
11 Your Honor --

12 THE COURT: That's what we're dealing with
13 next.

14 MR. GOLDSTEIN: We're actually withdrawing
15 it.

16 THE COURT: You are withdrawing it?

17 MR. GOLDSTEIN: The first portion. The only
18 argument we would have is to the second portion, we
19 are, as far as completeness, at Page 7, line 44
20 through the point at, which the government suggests,
21 which is Page 8, line 36, we have requested that
22 that come in under completeness.

23 THE COURT: Okay, now say that again because
24 I was making notes.

25 MR. GOLDSTEIN: I apologize.

1 THE COURT: That's okay.

2 MR. GOLDSTEIN: The first part, as we said,
3 we will withdraw.

4 THE COURT: Okay.

5 MR. GOLDSTEIN: The second part we're
6 requesting begin at Page 7, line 44.

7 THE COURT: Okay, let me read this.

8 (Brief pause).

9 THE COURT: These seem to me to be different
10 subjects. The subject to the first part is media
11 coverage. In fact, the first line of this section
12 begins with "we're going to be able to get coverage"
13 and then he mentions the subject, and Greenlee
14 responds about "it's gonna be harder because there
15 is so much other good stuff out there," which,
16 according to Greenlee, must have been said tongue in
17 cheek.

18 And then the Governor says some more about
19 poverty, and then Greenlee talks about getting a
20 second story out of something, and then there's
21 discussion which I think has to do with some kind of
22 appearance somewhere because he's asked about "are
23 you going to be at poverty" which is the shorthand
24 for something. And he said "yes," and then there's
25 a reference to a possible Senate candidate who will

1 also be there, and then the Governor says something
2 about "we'll get press."

3 what I'm willing to do, and I think he's
4 going to have to testify to explain, I'm willing to
5 let you start at line 22, because that is, at least,
6 -- he's talking about something else but at least
7 it's relevant to the stuff that's agreed to, because
8 he's going to appear -- I mean, obviously, it means
9 he's going to appear at the place where the Senate
10 candidate is there, and then they go into the Senate
11 stuff again, and then the rest of the stuff comes
12 in, so that makes sense to me; so that's my ruling.

13 I think that's it.

14 MR. SCHAR: I think that's it, Your Honor.

15 THE COURT: Who are your witnesses on Monday?

16 MR. GOLDSTEIN: We're just working on
17 scheduling. We will have them in the afternoon and
18 we will notify Mr. Schar as soon as we have them.

19 THE COURT: Right. Notify me, too.

20 MR. GOLDSTEIN: Will do.

21 THE COURT: But this leads to another
22 question I have, any of the witnesses that you're
23 going to have on Monday going to be lengthy
24 witnesses?

25 MR. GOLDSTEIN: I believe Mr. Ettinger is

1 going forward with his case-in-chief first.

2 THE COURT: Mr. Ettinger, are any of your
3 witnesses going to be lengthy?

4 MR. ETTINGER: Yes.

5 THE COURT: Okay.

6 MR. ETTINGER: Judge, we don't know if we're
7 going to be --

8 MR. GOLDSTEIN: I apologize, I didn't want
9 to --

10 MR. ETTINGER: No, that's all right.
11 We're still in discussions with our
12 codefendant as to if they have any witnesses to put
13 on before we put on our case.

14 Assuming we're going ahead first, Judge, it
15 will be Julie Blagojevich first and then Robert. I
16 expect Robert to be lengthy, Julie won't be.

17 THE COURT: Okay.

18 MR. SCHAR: Judge, a couple of things just to
19 be prepared for Monday. First of all, at least as
20 of today, I think, we have no discovery on any
21 potential witnesses. I don't know if they don't
22 have any in terms of reports, statements, documents
23 they're going to be using.

24 I also don't know if they plan on calling
25 experts still. We've gotten cursory -- or a letter

1 that is generally explaining the topic. I think
2 Your Honor had indicated that if they were going to
3 call experts, we'd be entitled to get that. We
4 haven't gotten anything. Maybe they don't intend
5 to, but I'll flag that.

6 And then, you know, obviously, we'll address
7 it witness-by-witness basis, but particularly with
8 Julie Blagojevich, you know, we're going to have
9 some concerns about the extent of her testimony and
10 the relevance at this point if it's going to be
11 anything like the opening statement which was a long
12 discussion of their history and everything that
13 they've done, which we don't think it's particularly
14 relevant.

15 Maybe Mr. Ettinger is not going to get into
16 that, but it would be the same if defendant Robert
17 Blagojevich testifies, and Rod Blagojevich, for that
18 matter.

19 I guess we'll take it on a witness-by-witness
20 basis to see whether or not any witnesses, obviously
21 including Robert, but whether any of the witnesses
22 are going to testify prior to; for instance,
23 defendant Rod Blagojevich testifying as to
24 conversations which the defendant participated in
25 which obviously would be hearsay. I just don't want

1 to waste the jury's time and we're going to stop and
2 go, stop and go.

3 THE COURT: We have two issues here.
4 Experts?

5 MR. ETTINGER: No.

6 MR. GOLDSTEIN: Judge, we have notified -- we
7 notified originally potential expert witnesses, the
8 government asked for more clarification, we did
9 provide more clarification as to what these expert
10 witnesses would testify to.

11 Basically, we have two potential expert
12 witnesses, one is an individual that would testify
13 about what can be done with campaign funds. It may
14 even be an area of stipulation, I'm not sure, but
15 it's a fairly minor point.

16 The other is an individual who is a former
17 International Revenue Service agent who's evaluated a
18 lot of financial documents that the government has
19 provided to us in terms of Mr. And Mrs. Blagojevich.
20 This individual would give his opinion as to the
21 evaluation of the financial statements and how the
22 Blagojeviches kept up with their finances and their
23 taxes.

24 THE COURT: Did this expert give you a
25 report?

1 MR. GOLDSTEIN: We do not have a written
2 report yet from this expert.

3 THE COURT: Generally speaking, I require
4 written reports, and this is not for discovery
5 purposes; whatever the obligations of discovery may
6 or may not be with respect to this, I require it
7 because otherwise I cannot make pretrial
8 rulings--well, we're well past that point--I cannot
9 make rulings on admissibility before the witness
10 takes the stand and we get a lot of delay.

11 But, basically, I need to have a written
12 report at least 48 hours before the witness takes
13 the stand, and that's an absurdly short period of
14 time but it's usually enough for me. So, basically,
15 you sort of have to get cracking on that.

16 The second issue -- it's always good to
17 actually look at the ruling.

18 (Brief pause).

19 THE COURT: Is there anything I should know
20 from the lawyers?

21 MR. ETTINGER: Judge, I was going to confer
22 with Mr. Schar and try to find out what his concerns
23 were about my client.

24 THE COURT: Oh, okay. All right, you don't
25 have to tell me now.

1 MR. ETTINGER: Well, what I would say to the
2 jury, I mean, I want to go into his background, not
3 for hours, just so the jury knows who he is, his
4 military history. I'm not going to spend an hour on
5 it, but --

6 THE COURT: But from whom are you getting
7 this?

8 MR. ETTINGER: Robert.

9 THE COURT: Okay. What about the other ones?

10 MR. ETTINGER: Judge, she's 20 minutes or
11 15 minutes, I don't expect it to be much longer.

12 MR. SCHAR: I probably have an hour on cross
13 or so.

14 (Laughter.)

15 THE COURT: Okay.

16 MR. NIEWOEHNER: Your Honor, I think it's
17 just a matter of, we understand that with Robert
18 Blagojevich some amount of background would be
19 appropriate. In opening, however, as an example,
20 Mr. Ettinger described background check on him, how
21 they gave him a top secret clearance, that seems to
22 be outside the scope of sort of the biographical --

23 MR. ETTINGER: We're going into his
24 background.

25 MR. NIEWOEHNER: Well, we understand that

1 he's going to give military history and positions
2 and responsibilities, all that's fine, but detailed
3 descriptions of the Persian missile, et cetera,
4 answers like that seems to be outside of what we
5 need.

6 MR. ETTINGER: Judge, I had a chart with
7 pictures of each of the generals and I'm going to
8 e-mail that to them today.

9 THE COURT: I believe that that statement was
10 not made entirely in earnest.

11 MR. NIEWOEHNER: I think that's right, Judge.

12 THE COURT: I'll let you proceed in a
13 reasonable way. I think you're aware of the risk
14 that inheres in any defendant getting on the witness
15 stand and telling the jury how wonderful their past
16 life has been and doesn't pay a lot of attention to
17 the charges in question.

18 MR. ETTINGER: We're going to pay attention
19 to the charges in question.

20 THE COURT: Now, I believe the second thing
21 that was raised by Mr. Schar was, the order of
22 witnesses in the defendant Rod Blagojevich's case,
23 and I believe Mr. Schar was waving a flag at
24 you--the "you," the record should show, is that I'm
25 looking at defense counsel--the flag that he was

1 waving at you was is that the defendant himself is
2 for much of what I anticipate will be going to be
3 coming in as a foundation witness. So instead of
4 calling the defendant last, as I believe I once said
5 at sidebar, maybe if at the end you may be calling
6 him first.

7 The only reason I say this is because if you
8 plan to call any number of witnesses who are going
9 to testify as to what the defendant said to them and
10 you're going to make any use of the truth of it,
11 then he's pretty much got to get on first, because I
12 don't want the jury to hear something, think that
13 it's being offered for its truth, and then the
14 requisites are not fulfilled for its offering for
15 its truth.

16 And, on top of that, some of the standard
17 exceptions to the hearsay rule, which we've seen a
18 lot of here, is statements made to explain action,
19 explain somebody's conduct. If you have witnesses
20 testifying about what the defendant Rod Blagojevich
21 said to them, it's hard to see how this is going to
22 be used on the theory that it explains the conduct
23 of the witness unless the acts of the witness are
24 themselves material to the charge and relevant to
25 the charge; and, in many cases, they won't be.

1 So the difficult choice for the defense here
2 would be do you put the defendant on first or near
3 to first and then follow with a bunch of
4 corroborating witnesses who could discuss some of
5 the statements of the defendant made to them because
6 he's testified to them and have been confronted by
7 the prosecution or whether you'll try some other
8 course of conduct.

9 So it's a live issue. And it's precise
10 application to any particular witness you're going
11 to offer, I don't know, but it's fair notice to you
12 that you're going to have to deal with this
13 question.

14 The advantage that you have, and this is a
15 significant advantage, to putting the defendant on
16 first is that you might possibly glean some idea of
17 how the jury receives that testimony which might
18 influence the choice of subsequent witnesses.

19 It is also possible that, in some
20 circumstances, I might allow you to bifurcate the
21 defense testimony, get some of the foundation stuff
22 laid first that it can be neatly severed from the
23 rest of it, have that cross-examined, and then put
24 him on afterwards. But the difficulty with that for
25 you is is that unlike almost any other witness, once

1 the defendant gets on the witness stand, lots of
2 limitations about scope are gone because we apply
3 the scope rule in cases in which one side calls a
4 witness, the other side cross examines and goes
5 outside the scope and I sustained the objection, and
6 one of the reasons you sustain the objection is the
7 other side can call that witness. This is a case
8 where in the case of a defendant in a criminal case,
9 they can't be called.

10 So I don't want you to think that my possible
11 agreement that you can bifurcate his testimony means
12 that you can limit his testimony once he gets on the
13 witness stand. There are, of course, limitations
14 with respect to scope that apply even to those in
15 criminal cases, but they're much narrower than the
16 ones that typically apply. This is just so you know
17 how I'm thinking.

18 Anything else we have to deal with?

19 MR. ETtinger: Rule 29, Judge.

20 THE COURT: There's a Rule 29 motion that you
21 want to make?

22 MR. ETtinger: Yes, Your Honor.

23 THE COURT: Do you want to make that motion
24 now?

25 MR. ETtinger: Yes, Judge; you heard the

1 evidence.

2 THE COURT: Assuming, as I must, that the
3 evidence must be taken in the strongest light of the
4 prosecution's case, the motion is denied.

5 You can make yours orally or in writing, as
6 you see fit.

7 MS. KAESEBERG: We filed a motion, but by
8 leave of Court I think we're going to file a
9 memorandum by Monday morning.

10 THE COURT: Well.

11 Anything else?

12 MR. GOLDSTEIN: Your Honor, just a couple of
13 things. We understand what you're saying as far as
14 the defendant testifying and we're and we certainly
15 have those types of plans. There's one witness, as
16 far as scheduling, that we're looking into, we're
17 just trying to get confirmation as to his
18 availability, it's Mr. John Filan. He is more of an
19 individual from pre-tapes, okay, that we --

20 THE COURT: I remember. That's the BOP guy.

21 MR. GOLDSTEIN: Correct.

22 THE COURT: Okay.

23 MR. GOLDSTEIN: As far as documents, we have,
24 as of today, no documents in addition to what the
25 government has provided to us. Any documents we may

1 use are, at this point, what the government has
2 provided to us.

3 And then as to the expert witness, the former
4 IRS agent, that's Mr. Lee Williams that Mr. Adam
5 spoke about in opening.

6 It isn't even completely his expert
7 testimony, but what we anticipate him doing is
8 similar to what Agent Schindler did as far as
9 evaluating documents, bank accounts, and that.

10 THE COURT: Right. But as I understand the
11 rules, he's got to write it down.

12 MR. GOLDSTEIN: Some of it is not all expert
13 testimony, it's just compiling and creating charts
14 and publishing those charts.

15 THE COURT: All right. What you can do,
16 because the government -- since I presume you asked
17 for the government's expert report and got them --

18 MR. SCHAR: We didn't offer an expert.

19 THE COURT: Well, you offered --

20 MR. SCHAR: A summary witness.

21 THE COURT: That's right, you offered a
22 summary witness.

23 MR. SCHAR: And, obviously, if they are
24 offering a summary witness, you know, as long as we
25 get the chart in enough time, at least to see if the

1 charts are accurate, then, obviously, that's fine,
2 but if they're offering to try to qualify somebody
3 as an expert to offer opinions, that's a different
4 situation. Agent Schindler did not do that.

:18PM

5 THE COURT: Okay, you can give them a report.
6 And if it is, it's partly summary, and I suspect
7 that that's correct, I think what you're telling me
8 makes sense to me. You just can give them the
9 exhibits and that's all you need.

:19PM

10 But if you have opinions, then he or she has
11 got to put them in writing and 48 hours is fairly
12 short notice, but they ought to be able to deal with
13 that.

14 Anything else?

:19PM

15 MR. SCHAR: No.

16 MR. GOLDSTEIN: Sorry, one other thing. As
17 far as the tapes, the tapes that have already been
18 played by the government, do we have permission to
19 play those in our case-in-chief, if need be?

:19PM

20 THE COURT: Generally speaking, you do,
21 subject to the government's objection that you're
22 checking something in the way that makes it
23 misleading, which is a little different from the
24 usual completeness objection.

:19PM

25 But if you've played this part, particularly

1 if it's been played four weeks since the jury's
2 heard it, you may have to play some more parts of
3 it. But I, obviously, have an interest in having as
4 little replay as possible in the interest of time,
5 but we'll see.

6 Thanks. See you Monday.

7 THE MARSHAL: All rise.

8 (Adjournment taken from 12:20 o'clock p.m. to
9 July 19, 2010, at 10:00 a.m.)

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:20PM

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER

/s/Blanca I. Lara

date

Blanca I. Lara

Date